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# LATHAM & WATKINS LLP

October 24, 2022

## VIA FOIAonline

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National Freedom of Information Officer  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (2310A)  
Washington, D.C. 20460

Re: Freedom of Information Act Request

Dear Sir or Madam:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* and the implementing regulations codified in Part 2 of Title 40 of the Code of Federal Regulations, on behalf of BMW of North America, LLC ("BMW NA"), I respectfully request that the U.S. Environmental Protection Agency ("EPA") provide immediate public access to the records described below in the time prescribed by 5 U.S.C § 552(a)(6)(A).

1. Emissions data, tests and results related to the testing performed by "44 Energy" or "MB" of BMW vehicle(s) as referenced in an email by and between Charles Schenk and Joel Ball dated May 3, 2016 (see ED\_006561\_00002914-00002, attached hereto as Exhibit A).
2. Documents and communications to, from or regarding "44Energy" or "MB" concerning the BMW testing referenced in Exhibit A, including but not limited to any communications by and between EPA and the California Air Resources Board and any communications by and between EPA personnel.
3. Documents and communications related to any other emissions testing, examination or assessment of any model year ("MY") 2009-2013 BMW X5 xDrive35d or MY 2009-2011 BMW 335d diesel vehicles (hereinafter, the "BMW Subject Vehicles") by or on behalf of "44Energy," "MB" or any vehicle manufacturer between 2014 and 2016.

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BMW NA wishes to minimize any burden associated with EPA's compliance with its requests in order to conserve EPA's resources and to expedite public access to the requested records. To that end, I would be glad to meet or confer with EPA staff to determine whether BMW NA should modify any portion of this request. In addition, if any portion of this request for records is deemed insufficient to allow EPA to identify and locate the requested records, please contact me by telephone as soon as possible at (312) 876-7621.

Pursuant to 40 C.F.R. § 2.104(a), within 20 working days of your receipt of this request, please send me your written determination stating which of the requested records will or will not be released and, for the latter, the reason(s) for each denial. If, pursuant to 40 C.F.R. § 2.104(d), your office receives notification that an EPA office taking action on this request has extended the basic 20 working-day period for an additional period, please notify me of such an extension in writing as soon as possible.

Please be advised that, in accordance with 40 C.F.R. § 2.107(a)-(c), BMW NA will pay the charges for searching for and reproducing the requested records. BMW NA prefers to make such payment upon the presentation of EPA's invoice for such charges concurrent with EPA's release of copies of the requested records. However, BMW NA is prepared to comply with any other reasonable payment arrangements which EPA deems appropriate, including advance payment as provided in 40 C.F.R. § 2.107(j). Please contact me as soon as possible by telephone to make any necessary arrangements.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. F. Foerster', with a large, stylized initial 'A' and a long, sweeping horizontal stroke extending to the right.

Arthur F. Foerster  
of Latham & Watkins LLP

*Counsel for BMW of North America, LLC*

# **EXHIBIT A**

Message

**From:** Ball, Joel [ball.joel@epa.gov]  
**Sent:** 5/3/2016 12:32:01 PM  
**To:** Schenk, Charles [schenk.charles@epa.gov]  
**CC:** Wehrly, Linc [wehrly.linc@epa.gov]  
**Subject:** RE: GL350 update  
**Attachments:** 2016-04-20 EPA -CARB Emissions Presentation FINAL (Confidential).pdf

Hi Chuck,

I attached the presentation. The dosing value in mg/sec is: **Ex. 4 CBI** The status registers I look at to see the OBD intrusive flags and the "dosing" mode are described below (q and a from previous email to Mercedes). I do not know if these are the best indicators in the full software package:

When you provided the limited a2l file, it contained the following parameters. I had a few questions regarding each of these parameters.

**Ex. 4 CBI**

I assume this is a status register. Please provide the definition of each bit in the register

This label shows the current state of the OBD SCR system monitoring state machine. In the case of fault suspicion, various checks are triggered by this state machine.

Normal operation mode:

**Ex. 4 CBI**

Operation mode (in case of fault suspicion only)

**Ex. 4 CBI**

I assume this is also a status register. Please provide the definition of each bit in the register. If not please explain what this parameter means.

This label shows a communication from OBD to SCR dosing strategy and contains requests which are sent there.

Bit (used bit depends on the requesting OBD function)	Description
<b>Ex. 4 CBI</b>	

Joel Ball  
Light-Duty Vehicle Group  
Compliance Division  
United States Environmental Protection Agency  
(734) 214-4238  
ball.joel@epa.gov

**From:** Schenk, Charles  
**Sent:** Tuesday, May 03, 2016 7:08 AM  
**To:** Ball, Joel <ball.joel@epa.gov>  
**Cc:** Wehrly, Linc <wehrly.linc@epa.gov>  
**Subject:** GL350 update

Joel,

Just a quick update on the PEMS testing. Carl and I have run a 70 mph cruise (w/o cruise control) with the ETAS and are planning to run another with cruise control today. The plan is to get a 55 mph cruise this afternoon if all goes well.

One question: What is the name of the SCR Dosing bit? I haven't spotted it in the data logs.

Ex. 7(A)	
Ex. 7(A)	Ex. 4 CBI

Did MB give you a copy of the presentation materials from the meeting? It would be interesting to reference that to what is in the data.

NCAT has a 3.0l BMW X5 diesel that might be interesting to test as a reference. I think both the 44Energy and MB data showed that it was a 'low' emitter. If properly tuned, what is an SCR system capable of? In that vein a similar weight gasoline SUV might also be worth a quick look. Is it (almost) always emitting <20 mg/mi?

I will put together a few slides to summarize the data. Would a one hour meeting be a good way to go over it? Probably next week for the GL350 results.

Please let me know if you have any suggestions, comments, or direction.

Thanks,  
Chuck